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No. 87-1515

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

THE MAINE CENTRAL RAILROAD COMPANY and
THE PORTLAND TERMINAL COMPANY,
Petitioners,
v.
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
and
NATIONAL MEDIATION BOARD,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF FOR RESPONDENT BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES IN OPPOSITION

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Whether the court below properly concluded that a statute which resolved a railway labor dispute by establishing the terms of the settlement between the parties was a reasonable exercise of Congress' authority under the Commerce Clause and did not violate the equal protection principles of the Fifth Amendment?

2. Whether the court below properly concluded that provisions of a statute settling a railway labor dispute which created entitlements for individuals who were employed by the railroad when the dispute began, but were separated from employment following commencement of a strike, did not violate the due process requirements of the Fifth Amendment?

3. Whether the court below correctly held that Congress did not improperly exercise judicial authority by enacting legislation to settle a labor dispute by establishing the substantive terms of a settlement between the parties?

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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BRIEF FOR RESPONDENT BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES IN OPPOSITION

The Maine Central Railroad Company and Portland Terminal Company (jointly referred to herein as "Maine Central" or "Railroad") have petitioned this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this

case. Respondent Brotherhood of Maintenance of Way Employes ("BMWE" or "Union") submits this brief in opposition to the petition.

OPINIONS BELOW

The opinion of the court of appeals is reported at 835 F.2d 368 (1st Cir. 1987), and is reproduced as Appendix A to the petitioners' brief. The opinion of the United States District Court for the District of Maine, from which Maine Central appealed, is reported at 646 F. Supp. 367 (D. Me. 1987), and is reproduced as Appendix B to the petitioners' brief.

JURISDICTION

The opinion and judgment of the court below were entered on December 11, 1987. The petition was filed on March 10, 1987. The court has jurisdiction of the petition pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. art. I, § 8, cl. 2:

> The Congress shall have Power . . . to regulate commerce with foreign nations and among the several states and with Indian Tribes.

U.S. Const. amend. V

> No person . . . shall be . . . deprived of life, liberty or property without due process of law.

Public Law No. 99-431, 100 Stat. 987 (Sept. 30, 1986), the statute which settled the dispute, is appended to the decision of the Court of Appeals and is included in petitioners' appendix at A-12 through A-14.[1]

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[1] References to the appendices to petitioners' brief will hereinafter be referred to as "Pet. App. at ——".

STATEMENT OF THE CASE

This case involves a challenge to the second of two acts of Congress directed toward the resolution of a labor dispute between Maine Central and BMWE. In Public Law No. 99-385, 100 Stat. 819 (referred to herein as the "First Act"), Congress extended by sixty days the cooling-off period imposed on the parties pursuant to the Railway Labor Act ("RLA"), 45 U.S.C. § 160. Pet. App. at A-2. The extended cooling-off period did not result in a resolution of the dispute by the parties so Congress enacted Public Law 99-431, 100 Stat. 987 (referred to herein as the "Second Act"), which ended the dispute by legislating a substantive resolution. Pet. App. at A-2 through A-3. Maine Central's challenge to the constitutionality of the First Act was rejected by the Court of Appeals for the First Circuit in *Maine Central Railroad Co. v. Brotherhood of Maintenance of Way Employes*, 813 F.2d 484 (1st Cir. 1987) (referred to herein as *Maine Central I*). This Court denied a petition for a writ of certiorari to the First Circuit in that case (Sup. Ct. No. 86-1958) on October 5, 1987. The instant petition concerns Maine Central's challenge to the Second Act.

The facts underlying the dispute between Maine Central and BMWE are set forth in the *Maine Central I* decision and will only be briefly set forth here. The Railroad and the Union began negotiations regarding changes in their collective bargaining agreement in 1984. The parties engaged in almost two years of negotiations in accordance with RLA requirements but were unable to reach agreement. On March 3, 1986 BMWE began a strike which it subsequently extended to include secondary picketing of other railroads. *Maine Central I*, 813 F.2d at 485.[2]

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[2] This Court rejected a challenge to the legality of that secondary picketing in *Burlington Northern R.R. Co. v. Brotherhood of Maintenance of Way Employes*, 481 U.S. ——, 95 L. Ed.2d 381 (1987).

Pursuant to a determination that the dispute threatened to interrupt interstate commerce and essential transportation services, the President appointed Presidential Emergency Board No. 209 to investigate and report on the dispute. *Id.* Under Section 10 of the RLA (45 U.S.C. § 160), appointment of the Emergency Board had the effects of requiring the parties to refrain from the exercise of self-help and of prohibiting them from changing the conditions out of which the dispute arose until thirty days after the Emergency Board submitted its report. The report was issued on June 20, 1986, and Maine Central rejected the Emergency Board's recommendations. The RLA cooling-off period expired on July 20, 1986; on August 6, 1986, Maine Central unilaterally implemented new work rules and rates of pay. *Id* at 486.

On August 12, 1986, Congress enacted the First Act, which extended the cooling-off period for another sixty days effective from July 31, 1986, and created a Congressional Advisory Board to investigate and make recommendations regarding the dispute. *Id.* Because the parties remained unable to reach an agreement Congress enacted the Second Act, which made the recommendations of the Emergency Board binding on both parties. Among other things, the Second Act adopted a recommendation of the Emergency Board which in essence accepted a proposal made by Maine Central to BMWE during their negotiations which would allow the railroad to reduce its workforce and change certain work rules, but would provide for protection payments for the benefit of dismissed employees (except that the protection payments were increased from the $20,000 per employee originally proposed by Maine Central to $26,000 per employee). Pet. App. at A-3, A-8. The Second Act also mandated binding arbitration for any "unresolved implementing issues" not specifically addressed by the Emergency Board Pet. App. at A-3.

As was noted above, Maine Central's challenge to the constitutionality of the First Act was rejected by the

District Court and the Court of Appeals; and its petition for a writ of certiorari to the First Circuit was denied. The decision in *Maine Central I* was relied upon by the District Court for the District of Maine and the Court of Appeals for the First Circuit in rejecting the challenge to the constitutionality of the Second Act. Maine Central now petitions for a writ of certiorari with respect to the First Circuit's decision affirming the constitutionality of the Second Act.

REASONS FOR DENYING THE WRIT

The Second Act involved nothing more than the exercise by Congress of its well-established authority to regulate labor relations in the rail industry. This Court held long ago that such authority extends to resolving a rail labor dispute by establishing the substantive terms of a settlement. *Wilson v. New*, 243 U.S. 332 (1916). The decision of the Court of Appeals is firmly rooted in that precedent and is not in conflict with any decision of this or any other court; accordingly, there is no reason for the Court to grant the petition for a writ of certiorari.[3]

The petitioner has argued that the Second Act violates the equal protection and due process components of the Fifth Amendment and the doctrine of separation of powers. However, those arguments are simply not supported by precedent regarding those constitutional principles; and they were properly rejected by the Court of Appeals. Indeed, virtually the same equal protection and separation of powers arguments as are offered here were rejected in *Maine Central I*, and they were advanced by petitioners in their unsuccessful petition for a writ of cer-

[3] Maine Central asserts that the decision of the District Court for the Northern District of New York in *Long Island Lighting Co. v. Cuomo*, 666 F. Supp. 370 (N.D.N.Y. 1987), *appeal docketed* No. 87-7759 (2d Cir.), conflicts with the decision of the Court of Appeals in this case. However, as we shall show below, there is no conflict between the two decisions.

tiorari from that decision. Those arguments, as well as their due process argument, should likewise be rejected in this case.

1. As the Court of Appeals observed, this Court recognized over seventy years ago that, pursuant to its "plenary legislative authority" to protect the "movement of interstate commerce," Congress may settle a rail labor dispute and "*bind both parties to the duty of acceptance and compliance*" with the settlement. Pet. App. at A-7, quoting *Wilson v. New, supra*, 243 U.S. at 350, emphasis supplied by the Court of Appeals. This Court has never limited the scope of that power and the courts have continued to recognize the breadth of Congress' authority in this area. *See Locomotive Firemen v. Chicago, Burlington & Quincy Railroad Company*, 225 F. Supp. 11 (D.D.C. 1964), *aff'd*, 331 F.2d 1020 (D.C. Cir.), *cert. denied*, 337 U.S. 918 (1964); and *Louisville and Nashville Railroad Co. v. Bass*, 328 F. Supp. 732 (W.D. Ky. 1971).

Apparently in recognition of this precedent, Maine Central does not challenge Congress' authority generally to regulate and, if necessary, intervene in and settle rail labor disputes. However, it contends that when congressional action affects specific individuals, the equal protection component of the Fifth Amendment requires that the exercise of such authority be subject to heightened scrutiny. Brief for Petitioners at 9-15.[4]

There is, however, no basis for applying a more rigorous standard of review than the rational basis test to Maine Central's challenge to the Second Act.[5] As the

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[4] The two statutes applied to *both* the Railroad *and* the Union, so contrary to Maine Central's contentions they did not affect just one individual. But, as the First Circuit stated in *Maine Central I*, even if only the Railroad was affected that would not change the standard of review of the statute. 813 F.2d at 488 n.6.

[5] In the Court of Appeals, petitioners argued that the Second Act was without rational basis, recognizing that the First Circuit had

First Circuit stated in *Maine Central I*, strict scrutiny is applied only to statutes which involve "the inherently suspect classifications of race, national origin or alienage or [which] impinge on a fundamental personal right"; and "heightened scrutiny" is applied only to statutes which involve classifications based on gender and legitimacy. Economic legislation, which does not involve any of those concerns, must be upheld "when the legislative means are rationally related to a legitimate government purpose." 813 F.2d at 488, citing *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985). Maine Central cannot claim to fall within any of the categories to which strict or heightened scrutiny is applied, and it has not identified a single case in which strict or heightened scrutiny was applied to economic legislation because it affected specific individuals.[6]

Moreover, as the First Circuit observed in *Maine Central I*, in cases which have dealt with legislation affect-

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rejected its heightened scrutiny argument in *Maine Central I*. Pet. App. at A-4, *Maine Central I*, 813 F.2d at 488-489. However, it has now advanced its heightened scrutiny argument in this petition, as it did in its petition from the decision in *Maine Central I*.

[6] Maine Central asserts that the decisions in *McFarland v. American Sugar Refining Co.*, 241 U.S. 79 (1916) and *Cotting v. Kansas City Stock Yards Co.*, 183 U.S. 79 (1901) "support the application of heightened scrutiny" in this case (Brief for Petitioners at 11). However, as the First Circuit noted in *Maine Central I*, reliance on those cases is misplaced because they predate this Court's determination that economic legislation should be analyzed under the rational basis test; the holdings in those cases were based on findings not merely that the statutes addressed specific individuals, but that similarly situated individuals were treated differently and, in actuality, the type of analysis employed in those cases was consistent with the modern rational basis test. 813 F.2d at 489. For the same reasons, the decision in *Long Island Lighting Co. v. Cuomo, supra*, does not support petitioners' argument for heightened scrutiny. Although that court expressed concern that the statute at issue addressed one individual, it nonetheless analyzed the equal protection issue under the rational basis test. 666 F. Supp. at 422.

ing specific individuals, this Court has applied the rational basis test. 813 F.2d at 489-491, citing *Fort Smith Light and Traction Co. v. Board of Improvement*, 274 U.S. 387 (1927); *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977); *City of New Orleans v. Dukes*, 427 U.S. 297 (1976). Maine Central has attempted to distinguish these decisions asserting that *Nixon* is inherently distinguishable and that *Fort Smith* and *Dukes* differ from the instant case in that the statutes there in dispute did not specifically identify the individuals affected, but rather used general terms which, in actual application, affected only specific individuals. Brief for Petitioners' at 13-15.

Maine Central's attempt to distinguish the *Nixon* decision on its facts is without force. Obviously, the two statutes arise out of different factual backgrounds, but Maine Central has not demonstrated that such differences require different types of equal protection analysis. Accordingly, *Maine Central's* ultimate response to the Court of Appeals' reliance on *Nixon* is to assert that the Court should utilize this case as a vehicle to limit the scope of the *Nixon* decision (Brief for Petitioners at 15). However, as the First Circuit stated in *Maine Central I* (813 F.2d at 490), although the legislation in *Nixon* was unusual, the Court's reasoning in that case is consistent with its holdings in other cases, principally *Fort Smith* and *Dukes*. In any event the Railroad has simply not demonstrated that the instant case is an appropriate one for reconsidering the decision in *Nixon*, that *Nixon* should be limited to its facts or that the Court below erred in relying in part on the *Nixon* decision.

Maine Central's attempt to distinguish this case from *Fort Smith* and *Dukes* is also unavailing. The basis for the challenges to the statutes involved in those cases was that their *effect* was to regulate a single individual; that the Second Act specifically applied to Maine Central and BMWE, whereas the statutes in *Dukes* and *Fort Smith* did not expressly identify the affected individuals,

but did single them out for adverse treatment, is not a distinction with any consequence.[7]

Ultimately, petitioners' equal protection argument is that the common thread among classifications which receive strict or heightened scrutiny is the lack of political influence of members of the classification, and that such treatment should be extended to classifications which include only single individuals since they are inherently lacking in political power. Brief for Petitioners at 9-11. However, the decision in *City of Cleburne, Texas*, on which they rely, provides no support for this argument. The court expressly stated that strict scrutiny was accorded classifications based on race, alienage or national origin because "[t]hese factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy . . .", 473 U.S. at 440; and that heightened review was accorded classifications based on gender and illegitimacy because these characteristics "bear[ ] no relation to the individual's ability to participate in and contribute to society . . ." *Id.* at 441, quoting *Matthews v. Lucas*, 427 U.S. 495, 505 (1976). Thus, stricter review is applied to statutes which prescribe different treatment for individuals in those classifications because of factors inherent to the characteristics of such classes of individuals, not because of their presumed political impotence.[8]

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[7] Maine Central also attempts to distinguish *Dukes* on the basis that the statute at issue there conferred a benefit on particular individuals, whereas the Second Act imposed obligations on the Railroad and the Union. However, the statute in *Dukes* was challenged by an individual who was excluded from the benefit conferred. BMWE submits that there is no functional difference between a challenge to a statute which imposes a burden on a particular individual and a challenge to a statute which excludes a particular individual from a benefit conferred upon others, so this further attempt to distinguish *Dukes* is unavailing.

[8] BMWE notes that even if Maine Central's new test was accepted it is doubtful that it would be applicable in the instant case. As the District Court below stated:

Maine Central's suggestion that the Court broaden the exceptions to the general rule of rational basis review of economic legislation is particularly inappropriate since the Court in *City of Cleburne, Texas* refused to extend heightened review to classifications based on mental retardation, noting that it had not extended such review to classifications based on age. *Id.* at 441, *citing Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 313 (1976). If the Court has been reluctant to broaden the classifications which receive heightened or strict scrutiny to include groups which bear some resemblance to the groups currently receiving such scrutiny it should not now extend such scrutiny to a potentially open-ended group consisting of anyone who assertedly lacks political influence.

Petitioners undoubtedly will also argue that the recent opinion of the Court of Appeals for the District of Columbia Circuit in *News America Publishing, Inc. v. Federal Communications Commission*, No. 88-1037, slip op. (D.C. Cir., March 29, 1988), supports their argument for heightened scrutiny of legislation which affects single individuals, and that that decision is therefore in conflict with the First Circuit's decision in the instant case. However, reliance on the decision in *News America Publishing* would be unavailing. In that case the D.C. Cir-

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> The Court has no basis on which it might find that the Railroad is a discrete and insular minority incapable of influencing the political processes. In fact, just the opposite appears to be true. The Railroad is but one member of the larger class of all railroads, traditionally considered to be among the most powerful of economic enterprises, a class whose own future contract negotiations must proceed under the coercive force of possible congressional intervention and impositions of similar economic burdens. The opportunity for coalition-building seems favorable, not unfavorable. The Railroad has not demonstrated, and indeed the Court believes it could not demonstrate, any basis upon which the Court might conclude that it has been the object of widespread prejudice as have been the groups traditionally recognized as suspect classes: racial and national minorities, women, aliens, and illegitimates.

Pet. App. at B-11 through B-12.

cuit, in a 2-1 decision, held unconstitutional a provision of appropriations legislation which barred the Federal Communications Commission from extending "current grants of temporary waivers" of a rule prohibiting cross-ownership of a daily newspaper and a television station in a community. slip op. at 1. Finding that the provision applied to only the one publisher/broadcaster which had a "current" temporary waiver of the cross-ownership rules (slip op. at 33), and that the provision was "astonishingly underinclusive" with regard to its stated purpose of ensuring that temporary waivers did not become permanent through a series of waivers. (slip op. at 29, 30), the court held the provision to be violative of the equal protection component of the Fifth Amendment.

Petitioners will presumably seek to draw support from the D.C. Circuit's application of an equal protection test which the majority described as a "more than minimum rationality" test. However, whether or not such a test was appropriate in that case, its use there does not help petitioner in this case since the legislation before the D.C. Circuit involved rights protected by the First Amendment, and the court relied heavily on that fact in concluding that it was necessary to "scrutinize such legislation under a test more stringent than the 'minimum rationality' criterion typically used for conventional economic legislation under equal protection analysis." slip op. at 2. Thus, the D.C. Circuit cited two decisions of this Court concerning regulation of publications protected by the First Amendment: *Arkansas Writers' Project v. Ragland*, —— U.S. ——, 107 S. Ct. 1722 (1987) and *Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue*, 460 U.S. 575 (1983), and stated that "the two cases clearly reflect extraordinary concern for any under inclusiveness where speech is at stake." slip op. at 22. The Court of Appeals also relied upon the decision in *FCC v. League of Women Voters*, 468 U.S. 364 (1984), in which this Court stated that "the

First Amendment must inform and give shape to the manner in which Congress exercises its regulatory power in this area." 468 U.S. at 375.

The D.C. Circuit likewise cited First Amendment concerns in rejecting the FCC's reliance upon the equal protection principle that Congress need not address a perceived problem all at once, but may choose to deal with particular aspects of a problem as they arise. slip op. at 32, citing *City of New Orleans v. Dukes*, *supra*, 427 U.S. at 305; *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 813 (1976); *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 488 (1955). The First Circuit, of course, relied in part upon that familiar principle in upholding the constitutionality of the Second Act. Pet. App. at A-7. The D.C. Circuit majority, however, declined to apply that principle to the case before it stating "courts reject facile one-bite-at-a-time explanation for rules affecting important First Amendment values." *Id.*, citing *League of Women Voters*, *supra*, 468 U.S. at 396; *Community-Service Broadcasting v. FCC*, 593 F.2d 1102, 1122 (D.C. Cir. 1978); *Arkansas Writers Project*, *supra*, 107 S. Ct. at 1730; *Minneapolis Star*, *supra*, 460 U.S. at 592. And in its concluding remarks, the majority stated that, "[w]hatever Congress's motive, the 'potential for abuse' of First Amendment interests is so great in such restrictions . . . that bland invocation of Congress' conventional power to approach a problem one step at a time cannot sustain the Amendment." slip op. at 33 (citation omitted).

Thus, it is clear that the reason that the D.C. Circuit relied upon a "more than minimum rationality" test was not that the challenged legislation affected only *News America Publishing*, but rather that *News America Publishing* was entitled to protection under the First Amendment; the court therefore concluded that somewhat greater scrutiny of the legislation was required than if it regulated conventional economic activity. Maine Central, of course, cannot similarly claim any special status which

would require that the Second Act be analyzed any differently than other economic legislation. Accordingly, even if the D.C. Circuit majority was correct in applying a "more than minimum rationality" test, its reasoning does not conflict with the First Circuit's decision in this case and does not otherwise support application of a higher level of scrutiny to Maine Central's challenge to the Second Act.

Thus, Maine Central's contention that the Court of Appeals' decision as to its equal protection argument is inconsistent with the precedent of this Court is plainly without basis and the Court should decline the invitation to create a new exception to the general rule of application of the rational basis test to economic legislation.

2. In its argument that the Second Act's requirement that Maine Central pay benefits to employees whose jobs had been abolished early in the strike, violates due process principles, Maine Central does not attack the First Circuit's holding (Pet. App. at A-9) that such a requirement is constitutional so long as it is not arbitrary or irrational; rather Maine Central takes issue with the court's conclusion that the allegedly retroactive aspect of the Second Act is neither arbitrary nor irrational. Brief for Petitioners at 15-17.[9]

Maine Central asserts that the Court of Appeals "failed to articulate why it was rational for Congress to require the Railroad to make these retroactive pay-

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[9] BMWE has consistently maintained that the provision for payment of benefits to employees whose jobs were abolished was not retroactive in effect since, as the District Court observed:

> . . . the issue of protective payments was central to the dispute then underway. The imposition of a solution limited to the current dispute can hardly be called retroactive.

Pet. App. at B-22 n.14. In any event, as is demonstrated in the text, if the benefits provision of the Second Act is found to have some retroactive effect, the enactment of those provisions was neither arbitrary nor irrational.

ments" and that it "simply held that it was reasonable for Congress to 'address all of the issues in dispute and resolve them.'" *Id.* at 16, quoting Pet. App. at A-8. However, in the very paragraph referred to by petitioners, the Court of Appeals clearly articulated why it found rational the requirement that Maine Central pay benefits to employees whose jobs had been abolished stating, "the dispute was ongoing and it concerned precisely the issues addressed by the so-called retroactive legislation—protection payments and work force reduction. Congress may well have decided that in order to avoid festering sores later, it should address all the issues in dispute and resolve them." Pet. App. at A-8. Thus, the Court determined that inclusion of employees whose jobs had been abolished after the strike began was neither arbitrary nor irrational since protections for employees whose jobs were eliminated was a central part of the dispute which caused the disruption of commerce.

The Court of Appeals' conclusion is well-supported by the decision of the District Court and the report of the Emergency Board which found that the principal issues in this dispute concerned Maine Central's desire to reduce the number of its maintenance of way employees and BMWE's demand for separation allowances for employees dismissed as a result of any reduction in forces (Pet. App. at B-22 n.14). Thus it was entirely rational for Congress to resolve the dispute by including individuals dismissed when the strike began in the protections provided in the settlement in return for the Railroad's right to reduce its forces.[10] Since legislation readjusting

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[10] Maine Central argues that "[r]equiring payments to [the laid off] workers gains nothing for the Railroad or for the public in terms of labor stability, efficiency or safety" (Brief for Petitioners at 17). However, as the Court of Appeals observed:

> While Maine Central sees this Act as imposing burdens on only one entity, it should be noted that the Act demands concessions from both parties, thus affecting all of the Maine Central

economic rights and burdens is not unlawful solely because it upsets otherwise settled expectations" (*Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 16 (1976)), and retroactive legislation complies with due process standards so long as "the retroactive application of the legislation itself is justified by a rational legislative purpose" (*Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 730 (1984)), and since the Second Act's requirement that Maine Central pay benefits to employees whose jobs were abolished after the strike began was rationally related to Congress' purpose of ending the disruption of commerce by settling the dispute, the Court of Appeals' decision is not in conflict with decisions of this Court regarding retroactive legislation.

3. Maine Central's final concention, that the Court of Appeals' decision is at odds with this Court's precedent regarding the doctrine of separation of powers because the Second Act settled a dispute between private parties (Brief for Petitioners at 17-19), is insubstantial on its face. As the Court of Appeals found, "Congress did not in this case intervene in the midst of a justiciable controversy" nor did it "decide the dispute on the basis of pre-existing rules, interpreting and applying the law" (Pet. App. at A-9). Rather the Second Act had the " 'purpose and effect of altering legal rights, duties and relations of persons . . . all outside the Legislative Branch.' "

> workers represented by the BMWE. The Railroad, in exchange for terms it had been willing to grant earlier, was given the right to a certain maintenance schedule and workforce reduction. It is not for us to decide if $26,000 in protection payments is too much or too little, as long as these payments rationally relate to settlement of the dispute that continued to threaten to paralyze rail traffic in various parts of the country.

Pet. App. at A-8. Thus, the Railroad gained the ability to reduce its workforce and change certain work rules and the public gained by ending the dispute and obtaining stability for the duration of the settlement imposed by Congress.

Pet. App. at A-10, quoting the decision of the District Court quoting *INS v. Chadha*, 462 U.S. 919, 952 (1983).

The Court of Appeals' reasoning is well supported by precedent concerning the nature of the adjudicatory function. This Court has stated that "Article III [of the Constitution] speaks of judicial power of the Court, which embraces application of principles of law or equity to facts, distilled by hearings or by stipulations." *Vermont v. New York*, 417 U.S. 270, 277 (1974). It has also stated that the exercise of judicial power "depends on the existence of a case or controversy." *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974). *See also* the decisions of the courts of appeals in *Air Line Pilots Association International v. Quesada*, 276 F.2d 892, 896 (2d Cir. 1960), and *Willapoint Oysters, Inc. v. Ewing*, 174 F.2d 676, 693 (9th Cir.), *cert. denied*, 338 U.S. 860 (1949), describing adjudication as involving the imposition of a duty or enforcement of a right, *in personam*, which is dependent on a pre-existing duty or right. Thus, the First Circuit's decision is entirely consistent with precedent of this Court and other courts of appeals regarding the distinction between legislative and judicial functions.

Additionally, Maine Central's argument completely ignores the fact that the courts have consistently upheld the authority of Congress to settle rail labor disputes. *See e.g., Wilson v. New, supra*, 243 U.S. at 347-8; *Maine Central I*, 813 F.2d at 487. The fact that the Second Act concerned only one railroad and one labor organization does not somehow convert the power exercised from legislative to adjudicatory. As the First Circuit noted in *Maine Central I*, "[n]othing in the Constitution says that a statute must be general in form to be legislative in nature"; and "a law that is an otherwise valid exercise of legislative authority does not go beyond that authority solely because it affects a named few." 813 F.2d at 493.

Because the Second Act simply involves the application of the traditional power of Congress to resolve rail labor

disputes to the dispute between Maine Central and BMWE, the decision of the court below is not at odds with this Court's decisions regarding the doctrine of separation of powers; Maine Central's argument on this point does not provide a basis for granting the writ.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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